

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

MAR 27 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Public Interest Obligations of
TV Broadcast Licensees

MM Docket No. 99-360

COMMENTS OF

**CENTER FOR MEDIA EDUCATION
PEGGY CHARREN
AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY
AMERICAN PSYCHOLOGICAL ASSOCIATION
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NATIONAL EDUCATION ASSOCIATION
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March 27, 2000

No. of Copies rec'd 014
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SUMMARY

Digital television ("DTV") offers the potential to increase quantity and enhance the quality of abilities of broadcast programming, as well as to provide a variety of other services. As broadcasters will now be able to provide much more than they could with analog television, their role as public trustees needs to adapt.

The Center for Media Education and the other groups and individuals filing with us are particularly concerned with ensuring that children benefit from DTV. Accordingly, we urge the Commission to adopt children's guidelines that impose additional obligations on broadcasters, but provide them with an appropriate amount of flexibility. Specifically, we propose that digital broadcasters have the option of satisfying their additional obligations to serve the educational and informational needs of children by either:

- Airing additional "core" educational and informational programming;
- Providing broadband or datacasting services to local schools, libraries or community centers that serve children; or
- Supporting the production of children's educational programming by local public stations or other noncommercial program producers.

In addition, we urge the Commission to adopt safeguards to ensure that children are not taken advantage of. Specifically, we recommend that the Commission:

- Update the current rules and policies regarding advertising to children, to ensure that they are applied on all DTV program services;
- Prohibit links to advertising or sales on Web sites or online services that are accessible during children's programming;

- Ensure that the principles of the Children's Online Privacy Protections Act of 1998 apply to DTV broadcasters collecting information from children; and
- Examine how DTV can be used to improve the current rating system.

Adopting these important proposals for the digital television environment will help meet children's educational and informational needs, and ensure that children are protected from potential dangers.

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The Center for Media Education,¹ Peggy Charren, American Academy of Child and Adolescent Psychiatry, American Psychological Association, Junkbusters, National Alliance for Non-Violent Programming, National Education Association, National PTA, Privacy Times, and Public Advocacy for Kids, ("CME *et al.*"),² by their attorneys the Institute for Public Representation and the Media Access Project, respectfully submit these comments in response to the *Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, FCC 99-390 (released Dec. 20, 1999) ("NOI"). In the NOI, the Federal Communications Commission ("FCC" or "Commission") asks for public comment on how digital television ("DTV") broadcasters should be required to serve the public interest, including how they can best serve the needs of children. NOI at ¶¶ 9-12.

INTRODUCTION

CME *et al.* is a coalition of national non-profit organizations that have a strong interest in improving the quality of children's electronic media and ensuring that advances in technology provide an educational and safe environment for our nation's children. As public trustees,

¹The Center for Media Education addresses other issues raised in the NOI in separate comments. *See Comments of UCC et al.* in this proceeding.

²*See* Appendix for a description of the organizations making up CME *et al.*

broadcast licensees have a statutory obligation to serve the public interest. 47 U.S.C. §§ 307(b), 309, 336(d). A principal ingredient of this obligation is a broadcast licensees' duty to serve the educational and informational needs of the children of its community. 47 U.S.C. § 303a-b. In these comments, CME *et al.* address how broadcasters should be required to serve the special needs of children in the digital age.

CME *et al.* urge the Commission to promptly issue a Notice of Proposed Rulemaking ("NPRM") that includes specific proposals on how DTV broadcasters will meet the educational and informational needs of children. Digital television provides broadcasters with the capability to multicast, datacast, combine programming with interactive applications, and broadcast in high definition television ("HDTV"). Broadcasters' obligations to children should be commensurate with these new capabilities. Digital licensees remain public trustees. Providing a minimum three hours a week of children's programming is a poor return for the nation's children in an environment where broadcasters have been given so many new possibilities to better serve children's needs.

Accordingly, we urge the FCC to adopt guidelines delineating how a broadcaster can meet its additional obligations to children in the digital environment. The Commission could require broadcasters to meet the needs of children in a variety of ways. Specifically, we propose that digital broadcasters could meet their additional obligations to serve the educational and informational needs of children by airing additional core educational and informational (E/I) programming,³ by providing broadband or datacasting services to local schools, libraries or

³"Core" programming is educational programming that counts towards a licensee fulfilling its public interest obligations with regard to children's educational television. It is

community centers that serve children, or by supporting the production of children's educational programming by local public stations or other noncommercial program producers.

In addition, we urge the Commission to recognize the benefits and the dangers inherent in DTV's interactive capability. Interactive DTV offers the potential to provide greatly improved educational programming for children. But at the same time, without adequate safeguards, DTV may be used to take advantage of children in an unprecedented manner. The Commission should update and strengthen the current rules and policies regarding advertising to children.

Specifically, the Commission should apply the current advertising policies (*e.g.*, no program length commercials, limits on the amount of advertising) on all program services, including ancillary or supplemental services, that are directed toward children 12 and under. Second, the Commission should prohibit links to advertising or sales on Web sites or online services that are accessible during children's programming. In addition, the Commission must ensure that the principles of the Children's Online Privacy Protection Act of 1998 apply to DTV broadcasters collecting information from children. Finally, the Commission should examine how DTV can be used to improve the current rating system.

defined in *Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660, 10662 (1996) ("1996 Report and Order").

I. THE COMMISSION MUST ENSURE THAT DIGITAL LICENSEES MEET THE EDUCATIONAL AND INFORMATIONAL NEEDS OF CHILDREN IN THE DIGITAL ENVIRONMENT

In the Telecommunications Act of 1996, Congress awarded incumbent broadcasters alone the opportunity to use additional spectrum valued at over \$70 billion. *See* 47 U.S.C. § 338. At the same time, Congress reaffirmed the duty of broadcasters, as trustees of the public's airwaves, to serve the public interest with respect to all of its services. *See* 47 U.S.C. § 336(d). However, Congress gave the Commission the discretion to determine how broadcasters should meet their public interest obligations. *See id.*

A. Broadcasters Should Have Additional Obligations to Children with DTV Because Their Abilities Will be Greatly Increased

An essential part of broadcasters' public interest obligations is meeting the educational and informational needs of children. Congress, the Commission and the courts have historically recognized that broadcasters have special obligations to serve children.⁴ Indeed, the 1990 Children's Television Act ("CTA") explicitly requires that broadcasters provide programming specifically designed to serve the educational and informational needs of children. *See* 47 U.S.C. § 303b(a)(2). The fundamental role of broadcasters as public trustees is not altered with the transition to DTV. What has changed, however, is the ability of broadcasters to fulfill that role. DTV provides the opportunity to broadcast five or more channels in the same amount of spectrum that previously was needed for a single channel. DTV also provides the opportunity for

⁴*See, e.g.,* 47 U.S.C. § 303b; S. REP. NO. 101-227, at 2 (1989) ("CTA Senate Report"); *Children's Television Report and Policy Statement*, 50 F.C.C.2d 1, 2 (1974) ("1974 Policy Statement"); and *Action for Children's TV v. FCC*, 821 F.2d 741, 743 (D.C. Cir. 1987). *See also Children NOW Comments* at Part III.

higher quality sound and pictures, enhanced and interactive programming, datacasting and other new services.⁵ To ensure that the child audience benefits from these enhanced capabilities, it is essential that the FCC set forth clear, quantifiable guidelines on how DTV broadcasters can meet the needs of children.

Broadcasters will still be required to air three hours of core children's programming on the "primary" channel as discussed in *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12830 (1997) ("Fifth Report and Order"). However, a mere three hours a week of E/I programming in the DTV environment is insufficient.⁶ Indeed, the NOI recognizes this, asking whether "a licensee would need to air children's programming on each of its DTV program streams." NOI at ¶11. While CME *et al.* agree that increasing the quantity and diversity of children's E/I programming is an important public interest objective, we do not think it is necessarily in the best interests of children to require broadcasters to air an additional three hours on every program

⁵For a further discussion of DTV's enhanced capabilities, see *Comments of Children Now* at Part II.

⁶CME *et al.* think the current amount of three hours is insufficient to meet the variety of children's needs. Children age 16 and under make up over one-fifth of the population. Moreover, children have diverse needs and interests. What is educational for a pre-schooler is not educational for a teenager. Moreover, there is evidence that the programming provided under the current guidelines is not meeting the needs of children. While Congress recognized the needs to serve both cognitive and social/emotional needs of children, the majority of programming today falls into the social/emotional category. See Center for Media Education, *InfoActive Kids 2* (Spring 1999). The current three hour guidelines reflected an amount of programming that was clearly attainable. See 1996 Report and Order, 11 FCC Rcd at 10719-21. However, in light of the added capacity multicasting offers, DTV broadcasters can now air more programming and should provide far more programming that meets the educational and informational needs of children of all ages.

stream.⁷

We think a better approach would be to offer broadcasters a range of options for meeting the needs of children, allowing broadcasters the flexibility to choose the best way to serve the needs of children in their community. The CTA itself provides broadcasters alternative ways to meet children's E/I needs.⁸ The Commission should adopt similar options for DTV broadcasters. Specifically, to ensure that the goals and intent of the CTA are carried over to digital television, we propose that DTV broadcasters should be given the following options to choose from to fulfill their additional obligations to children:

- Air more educational and informational programming specifically designed for children;
- Provide multi-casting and/or broadband/datacasting services to local schools, libraries, and community centers; or
- Support funding for the production of children's educational programming by local public broadcasting stations and other non-commercial, educational organizations.

These options are not exclusive. Broadcasters should be able to fulfill their public interest obligations to children by selecting either a single option or some combination of the options. This allows broadcasters the flexibility to do what works best in the context of how they

⁷In the multicast environment, it is likely that broadcasters will create specialized channels, and that some of those program channels would not be an appropriate place for children's programming. Moreover, it may be easier for children and their parents to find E/I programming if it were placed on a single or small number of channels.

⁸Specifically, the CTA instructed the Commission to consider, during renewal application procedures, how licensees served the educational and informational needs of children through: (1) the broadcaster's own programming designed to educate children; (2) "nonbroadcast efforts" that enhance the value of children's educational programming; (3) efforts by the broadcaster to support the educational programming of another broadcaster in the same marketplace. *See* 47 U.S.C. § 303b.

utilize their digital capacities.⁹ Moreover, it is important that each option incorporate specific, quantifiable measures (*e.g.*, hours per week, or percentage of revenue). Providing broadcasters with specific quantitative guidelines ensures that a substantial amount of resources will be committed to serving the educational needs of children, while providing broadcasters with a bright-line guide so that they can be confident that they have fulfilled their obligations. It also ensures that every licensee is doing its fair share, so that no licensee is competitively disadvantaged for taking its public interest obligations seriously.¹⁰

B. Broadcasters Should Have the Option of Fulfilling their Additional Obligations by Providing More Educational and Informational Programming for Children.

Providing broadcasters with the option of airing additional E/I programming merely implements broadcasters' duties under the CTA to serve "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed" to serve those needs. *See* 47 U.S.C. § 303b(a)(2); *see also* 1996 Report and Order, 11 FCC Rcd at 10718 (implementing that duty as a three-hour guideline in the analog environment). We suggest that this option could be fulfilled in three different ways.

First, the broadcaster could dedicate an entire channel to E/I programming. This option

⁹We recognize that such flexibility is important as DTV broadcasters will have the ability, *inter alia*, to vary their use of their new capacities throughout the day. *See Comments of Children Now* in this proceeding, at Part II. A.

¹⁰*See* 1996 Report and Order, 11 FCC Rcd at 10663 (stating that "a processing guideline will help ensure that broadcasters who wish to provide an ample amount of children's educational programming, will not find themselves at an unfair disadvantage in the market relative to competing broadcasters who do not, and will not find themselves facing competitive pressure to forgo airing educational programs"). *See also Comments of UCC et al.* at Part II. A.

would be practical for broadcasters who intend to use most of their digital spectrum to multicast on several channels.

Second, the broadcaster could dedicate an entire channel to public interest programming that dedicates a certain number of hours per week of E/I programming. This option provides broadcasters an opportunity to use multicasting to satisfy all of their additional programming obligations on one channel.

Third, the broadcaster could air additional hours of E/I programming proportional to the amount of hours the licensee multicasts. Dedicating a portion of the spectrum in proportion to the actual use of the spectrum allows for flexibility among broadcasters. This option may be preferable for a broadcaster choosing not to offer a substantial amount of multicasting.

C. Broadcasters Should Also Have the Option of Providing Multicasting and/or Broadband/Datacasting Services to Local Schools, Libraries and Community Centers that Would Not Otherwise Benefit from that Technology.

It appears that some broadcasters are likely to use their new spectrum to offer various types of data and Internet services.¹¹ Such broadcasters might opt to provide these types of services to local schools, libraries and community centers in lieu of providing some additional E/I programming. We suggest that this option could be fulfilled in three different ways.

First, broadcasters could lease a specified percentage of their multicast capacity to nonprofit organizations that serve children at no charge. Schools, for example, would be able to use that capacity for airing their own programs developed by students or designed for students.

¹¹See, e.g., Glen Dickson, *IBlast Makes Datacast Splash*, BROADCASTING & CABLE (Mar. 13, 2000); Richard V. Ducey, *Internet + DTV = UN-TV*, <<http://www.nab.org/research/ribriefs/DTV-Internet.asp>> (last visited Mar. 14, 2000).

Second, broadcasters could provide a specified amount of their datacasting capacity to local schools, libraries, and/or community centers. Under this choice, designated institutions could use that capacity to provide children with "virtual field trips" from a remote site or allow schools to download programs or information overnight. The President's Advisory Committee noted that datacasting could "transmit course-related materials, such as lesson plans and teacher and student guides, as part of instructional video programming." *Advisory Committee on Public Interest Obligations of Digital Television Broadcasters: Charting the Digital Broadcasting Future*, Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (1998).¹²

Third, broadcasters could provide Internet access to schools, libraries, or other non-profit organizations that serve children. The Commission should explore the possibility of broadcasters using their digital "pipe" to help bridge the digital divide in urban and rural areas by helping schools get connected. *See id.* Access to the Internet provides vast educational opportunities for children and access to vast resources and information. *See* Andrew Carvin, *The World Wide Web in Education: A Closer Look*, <<http://metalab.unc.edu/edweb/resource.cntnts.html>> (last visited Mar. 23, 2000).

These options are analogous to the option in the 1990 Act discussing the "nonbroadcast efforts" of the licensee. *See* 47 U.S.C. § 303b(b)(1). They are also akin to People for Better TV's suggestion that DTV may better serve children by "setting aside a minimum number of

¹² The Advisory Committee notes that transmitting information by way of datacasting does not impose an undue burden on broadcasters as it consumes generally less than one percent of the spectrum allocated to each broadcaster. *See id.* at 54.

hours each week to provide educational programs or services, which might include data transmission for schools." NOI at ¶12. A major concern in the digital era is ensuring that the benefits of this technology reach all members of society. Such an option could directly assist the education of children, especially those in rural and low-income areas that do not generally have access to the Internet or the other technologically advanced services that are offered in wealthier school districts.

D. If Broadcasters Choose to Pay a Fee to Fund Public Stations and/or Programmers, the Commission Should Ensure that this Option will Truly Increase the Likelihood of High Quality, Innovative Programming that Utilizes DTV's New Capabilities.

Both the CTA and the 1996 Report and Order clearly require broadcasters to fulfill their public interest obligations to children by broadcasting some E/I programming themselves. *See* 47 U.S.C. § 303b; 1996 Report and Order, 11 FCC Rcd at 10721-22. However, the CTA also allows the Commission to take into account what efforts the broadcaster has made to support E/I programming on other stations. In translating this option into the digital environment, CME *et al.* urge the Commission to construct a funding option that will meaningfully promote children's educational programming and prevent broadcasters from evading their public interest obligations by paying a nominal fee to any broadcaster.

We suggest that broadcasters be given the option of paying a certain, appreciable percentage of their gross revenues to either: (1) local public television stations which could utilize the money to produce local children's educational programming or purchase quality syndicated children's educational programming, or (2) a fund such as the National Endowment for Children's Programming, which can, in turn, grant money to non-profit producers of

children's programming.¹³ We believe that structuring the payment option to include these safeguards would meet the goal of increasing the quantity and quality of children's educational programming in the digital environment.

Public television stations could use the additional funding to create new children's educational programs that take advantage of DTV's enhanced capabilities. For example, high-definition programs or interactive programs could make educational material more exciting and appealing to children.¹⁴ PBS has already created an intricate Web site explaining digital television and how it can benefit children. *See* <<http://www.pbs.org/digitaltv/>> (last visited March 23, 2000).

CME *et al.* stress that a funding option *in no way* relieves a broadcaster from its fundamental obligation to provide a minimum amount of children's E/I programming. The primary focus during renewal application proceedings should still concentrate on the broadcaster's own efforts.

¹³Consistent with the Separate Statement of Lois Jean White of the Advisory Committee, the PTA expresses its concerns with the "pay or play" option. *See Advisory Committee* at 99.

¹⁴For example, Mr. Fred Rogers of *Mr. Roger's Neighborhood* explains:

Now that high definition is here, we need do what we can to try to use it as thoughtfully as possible for children and their families. This new form of television could be of great service to people in that it brings more detail to a picture on the screen – more to look at, closely and carefully. Imagine what it can mean for a child to be able to see intricate details in a flower in a garden or in an animal at a zoo . . . or in another person's face Letter from Fred Rogers for PBS Digital TV Web site (November 1998), <<http://pbs.org/opb/crashcourse/hdtv/fredrogers.html>> (last visited March 16, 2000).

II. THE COMMISSION MUST ADOPT SAFEGUARDS TO PROTECT CHILDREN FROM THE DANGERS OF EXCESSIVE AND UNFAIR ADVERTISING IN THE DIGITAL ENVIRONMENT.

In addition to ensuring that broadcasters meet the educational and informational needs of children, the Commission has also been traditionally concerned with advertising practices aimed at children. The 1974 Policy Statement explained that, "[t]he Commission's statutory responsibilities include an obligation to insure that broadcasters do not engage in excessive or abusive advertising practices." 1974 Policy Statement, 50 F.C.C.2d at 7. Congress reaffirmed the Commission's policies toward children in the CTA. *See* 47 U.S.C. §§ 303a-b, 394 (directing the Commission to limit the permissible amount of commercial advertising that could be aired during children's programming and to adopt rules regarding program length commercials). *See also* CTA Senate Report at 22 (noting that important policies of "separation of programming and commercial material or host-selling, tie-ins, and other practices which unfairly take advantage of the inability of children to distinguish between programming and commercial content" in the 1974 Policy Statement remain in effect).

The Commission asks how the policies set forth in the 1974 Policy Statement should apply in the DTV environment. *See* NOI at ¶12. The Commission needs to update its policies and regulations to ensure that children are still protected against excessive or unfair advertising. Because digital television, with its captivating ability to combine broadcast and interactivity, will likely pose an even greater threat than television, additional safeguards are essential.

Accordingly, we propose the following:

- Existing advertising policies and regulations should apply to all programs that are directed toward children 12 and under on all program services, including ancillary and supplementary.

- Rules should prohibit links to advertising or sales on Web sites and online services during children's programming.
- The principles of the Children's Online Privacy Protection Act of 1998 should apply to any DTV broadcaster collecting information from children.

Finally, in addition to updating the policies and rules concerning children and advertising, CME *et al.* suggest that the Commission examine ways that DTV could help improve other protections, such as the current ratings system.

A. Advertising Requirements Must Apply to All Programs Services that are Directed Toward Children

Existing restrictions on advertising to children both limit the amount and type of advertising on programs directed at children age 12 and under. Advertising is limited to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *See* 47 C.F.R. § 73.670. In addition, broadcasters are required to provide a clear separation between programs and advertisements, are prohibited from host-selling, and are prohibited from airing program-length commercials directed at children 12 and under. *See* 1974 Policy Statement, 50 F.C.C.2d at 8-18.

The Commission should make it clear that these policies apply to all programs directed at children age 12 and under, regardless of what program stream they are offered on. All of the same concerns regarding children and advertising enunciated in both the 1974 Policy Statement and the 1990 CTA and implementing orders apply when children are watching video programs, regardless of whether the channel is free or ancillary (pay).¹⁵ Accordingly, the rules should apply

¹⁵*See* Part IV of UCC, *et al.* comments in this proceeding.

to all DTV programming airing children's shows, regardless of the type of channel.¹⁶

B. The Commission Should Prohibit Links to Advertising or Sales During Children's Programming.

DTV offers great opportunities for enhancing children's education through the convergence of television and interactive services. As Bill Shribman, a multimedia producer at WGBH-TV Boston, stated, "digital television affords children an opportunity to participate in the creative processes of television shows and Web sites, allowing them, for instance, to manipulate what they are seeing onscreen through the use of the Internet." Maya Dollarhide, Digital TV Brings Kids into the Picture, Freedom Forum Online (May 6, 1996). "ZOOM" is an excellent example of how interactive programming can benefit children's educational needs.¹⁷ Based on the television show, ZOOM is a Web site for children that provides over 20 interactive features, enabling children to contribute ideas, games, predictions, stories and scientific feedback. *See id.* It encourages children to experiment with science and math and share their experiences with other children using the site. *See id.*

However, the interactive capabilities of DTV also present the opportunity for marketers to take advantage of children. This is already happening on many children's Internet sites. *See* Leslie Miller, *Children's Crusade Advocates Work Behind the Scenes to Fight the 'Powerful Forces' of Marketers Who Target Kids' Privacy in New Media*, USA TODAY, Mar. 10, 1999, at 4D; Center for Media Education, *Web of Deception: Threats to Children from Online*

¹⁶Cable television operators, who offer multiple channels with children's programming, are similarly subject to the advertising limits. *See* 47 U.S.C. § 303a(d).

¹⁷*See* Zoom: For Kids, By Kids <<http://www.pbs.org/wgbh/zoom>> (last visited Mar. 24, 2000).

Marketing, Special Report (1996). For example, interactive technology encourages advertisers to develop online relationships with children and then personalize advertisements toward them. See Kathryn Montgomery, *Digital Kids: The New Online Children's Consumer Culture*, Center for Media Education (1999); and People for Better TV, *The Dangers of DTV* at <<http://www.bettertv.org/dangers.html>> (last visited Mar. 20, 2000). At the *Batman Forever* Web site, for instance, information was collected from children for the purpose of advertising, telling them that providing the information made them "good citizens" of Gotham. See *Digital Kids* at 7.

Unsurprisingly, advertisers are already developing ways to exploit interactive television for similar advertising purposes. For example, a New York-based ad agency, Ammirati Puris Lintas, has already launched an interactive ad for "Lego Mindstorms."¹⁸ Children watching the ad with the Microsoft WebTV Network Plus service see an "I" in the top right-hand corner indicating that the ad is "interactive" and by clicking the WebTV remote, the child is transported to Lego's online store. See *id.*

Because children spend or influence the spending of large amounts of money, advertising agencies are currently devoting substantial resources to develop techniques to advertise to children in the new interactive media environment. For example, in a recent issue of *Kidscreen*, a magazine aimed at those in the children's television industry, "Nickelodeon Nation" ran an ad stating, "If you want the family business, talk to the junior partners!" The ad then presented statistics on what percentage influence children have on the purchasing decisions of particular

¹⁸See Duncan Hood, *New TV Ads Let Viewers Buy with a Click*, KIDSCREEN, December 1, 1999, at 27.

products. *Kidscreen* 25, January 2000. Notably, there has been a recent movement among psychologists to include ethical guidelines in the American Psychological Association to deter psychologists from aiding marketers to better target children. See Marilyn Elias, *Selling to Kids Blurs the Ethical Picture: Proposal Before Psychologists Group Would End Assistance to Advertisers*, USA TODAY, Mar. 20, 2000, at 7D. The movement is in response to the growing practice of marketers of hiring psychologists to interview and observe children in order to evaluate their reactions to certain products or forms of advertisements. See *id.*

The money to be made by marketing to children, combined with the opportunities presented by DTV, virtually assure that children will be subjected to excessive and unfair marketing unless the FCC acts quickly to impose safeguards. As the D.C. Circuit has noted, "the FCC's regulation of children's television was founded on the premise that the television marketplace does not function adequately when children make up the audience." *Action for Children's TV*, 821 F.2d at 746. It is now axiomatic that children have difficulty distinguishing content from commercials. See 1974 Policy Statement, 50 F.C.C.2d at 14. This danger is even more pronounced in the digital environment. With interactive television, a child could be transported to a commercial Web site by a mere click of a button. It would be extremely difficult, if not impossible, for a child to distinguish the program from the advertising. This would contravene the Commission's longstanding separation policy. See *id.*; *Policies and Rules Concerning Children's Television Programming*, Revision of Programming and Commercialization Policies, Ascertainment Requirements, 6 FCC Rcd 5093, 5100 (1991). We therefore advocate that the Commission, under its public interest authority, prohibit all commercial links during children's programming. The Commission should also examine what

other safeguards would be helpful in protecting children from unfair advertising practices.

C. The Commission Needs to Ensure that the Principles of the Children's Online Privacy Protection Act of 1998 ("COPPA") Apply to Services Provided over DTV.

Another problem with interactive television is that it could allow for the collection of personal information from children without their parents' knowledge and consent. In October 1999, the Federal Trade Commission ("FTC") issued its final rule implementing the Children's Online Privacy Protection Act ("COPPA"). COPPA was enacted after Congressional findings that the Internet provided threats to children through invasion of privacy, and that self-regulatory efforts by the industry were not enough to solve the problem. *See* H.R. Rep. No. 3783, 105th Cong, 144 CONG. REC. H 9902 (1998).

Under COPPA, commercial Web sites and "online services" directed toward children are required to post a detailed privacy notice and required to obtain "verifiable parental consent" before collecting and/or disclosing personal information about children. *See* 15 U.S.C. § 6501, *et. seq.*, and 16 CFR 312.1, *et. seq.* Thus, any commercial Web site or portion of a Web site operated by a broadcaster and directed at children would be covered by COPPA.¹⁹

We are concerned, however, that through the use of its digital capacity, a broadcaster may be able to collect information from children in ways that would not clearly fall within COPPA. Because collecting information from children through broadcast raises the same concerns that led to the passage of COPPA, the Commission should promulgate regulations to ensure that similar

¹⁹COPPA also would apply to any commercial Internet web sites directed at children that may be linked to a children's program (although if our proposals are adopted, such links would not be permitted).

rules apply to DTV broadcasters. Section 336 of the 1996 Telecommunications Act explicitly gives the Commission the authority, to "prescribe such . . . regulations as may be necessary for the protection of the public interest." 47 U.S.C. § 336. Thus, the Commission has ample authority to create rules to fill in any potential gaps where COPPA may not apply and failure to impose regulations would result in similar harms.

D. The Commission Should Consider Using DTV to Improve Existing Protections for Children.

Finally, CME *et al.* agree with PBTv that the Commission should explore how DTV could be used to provide more useful information for parents to use in making decisions about what programming is appropriate for their children. *See* NOI at ¶12. For example, one of the complaints about the current rating system is that the ratings are only displayed for a short period of time. Perhaps with digital television, viewers could have an easy method to display the ratings at any time during a program. For parents that want more information than that conveyed by the rating alone, a broadcaster might provide links to Web sites or other sources that provide more detailed descriptions of the programming.

In addition, DTV might support multiple rating systems, not just the one that the majority of the industry has agreed to use. Allowing for competing ratings by third parties would be desirable. It would give the industry an incentive to do a better job with its own ratings.²⁰ In addition, parents dissatisfied with the industry ratings would have the ability to choose a ratings

²⁰A recent study indicated several problems with the current rating system, including that the descriptors used to flag sexual or violent content were not being used as often as they should, and that the limited range of rating options constrain the system. *See Rating the TV Ratings: One Year Out*, Kaiser Family Foundation at 85-89 (1998).

system that better reflects their values and concerns.

CONCLUSION

CME *et al.* urge the Commission to promptly issue an NPRM that includes specific proposals on how DTV broadcasters can meet the educational and informational needs of children. Specifically, we propose that digital broadcasters could choose to serve the educational and informational needs of children by airing additional core educational and informational (E/I) programming, by providing broadband or datacasting services to local schools, libraries or community centers that serve children, or by supporting the production of children's educational programming by local public stations or other noncommercial program producers. The Commission should also clarify that the current children's advertising policies apply on all DTV program services that are directed toward children 12 and under and prohibit links to advertising or sales during children's programming. In addition, the Commission should apply the principles of COPPA to DTV broadcasters that seek to collect information from children, and consider how DTV can be used to make the current ratings system more useful for parents.

Respectfully submitted,



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March 27, 2000

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APPENDIX

Description of Organizations

THE CENTER FOR MEDIA EDUCATION (CME) is a national nonprofit, nonpartisan organization dedicated to creating a quality electronic media culture for children, their families, and the community. CME's four-year national campaign led to the 1996 Federal Communications Rule requiring a weekly minimum of three hours of educational television programming. CME's report "Web of Deception" (1996) first drew attention to potentially harmful marketing and data-collection practices targeted at children on the Internet and laid the groundwork for the Children's Online Privacy Protection Act (COPPA).

PEGGY CHARREN founded Action for Children's Television, the 10,000-member national child advocacy organization that has encouraged responsible broadcasting since its inception in 1968. She is also a visiting scholar at the Harvard University Graduate School of Education, where she serves on the Technical Council.

THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY (AACAP) is a nonprofit professional organization representing over 6,500 child and adolescent psychiatrists. Its members are physicians with at least five years of additional training beyond medical school in general and child and adolescent psychiatry. Its members actively research, diagnose and treat psychiatric disorders affecting children, adolescents, and their families. The AACAP is committed to protecting the well-being and rights of children and their families.

THE AMERICAN PSYCHOLOGICAL ASSOCIATION (APA) is the largest scientific and professional organization representing psychology in the United States. With more than 159,000 members, APA is also the largest association of psychologists worldwide. The APA works to advance psychology as a science, a profession, and a means of promoting human welfare.

JUNKBUSTERS CORP. helps consumers defend themselves against intrusive marketing and protect their privacy online. At <http://www.junkbusters.com>, the company provides extensive free resources for stopping telemarketing calls, unwanted physical mail, junk email, and commercial invasions of privacy on the Internet.

THE NATIONAL ALLIANCE FOR NON-VIOLENT PROGRAMMING (NANP) is a not-for-profit network of organizations with a long history of effective community involvement and education. Member organizations include the American Medical Women's Association, Jack and Jill of America, Inc., Jewish Women International, the Links, Inc., the National Association of Women Business Owners, National Council of LaRaza, Soroptimist International of the Americas, and YWCA of the U.S.A. With the capacity to reach two million people, NANP builds and supports community initiatives to promote and teach media literacy and non-violence. NANP headquarters in Greensboro, NC serves as the information, technical assistance, materials

distribution and network center for member organizations, local initiatives and the general public.

THE NATIONAL EDUCATION ASSOCIATION (NEA) is America's oldest and largest organization committed to advancing the cause of public education. Founded in 1857, the NEA has over 2.3 million members who work at every level of education, from pre-school to university graduate programs. NEA has affiliates in every state as well as in over 13,000 local communities across the United States.

THE NATIONAL PTA is the largest volunteer child advocacy organization in the United States. The National PTA is a not-for-profit organization of parents, educators, students, and other citizens active in their schools and communities, and is concerned with the education, health, and welfare of children and youth.

PRIVACY TIMES, a Washington-based newsletter that covers the information world, is designed for professionals and attorneys who need to follow the legislation, court rulings, and industry developments that frame the ongoing debate about information privacy. Privacy Times covers such issues as the FTC's developing policy for the Internet, credit reports, Caller ID, medical records, "identity theft," the Freedom of Information Act, direct marketing and the European Union's Directive On Data Protection.

PUBLIC ADVOCACY FOR KIDS is a non-profit child advocacy organization devoted to education, health, telecommunication, and parental involvement issues at the federal level. Services provided on a consulting basis include advocacy training, child policy development, organizing for local and federal action, and communications development.